

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-O-15437-PEM
)	
ISAURO A. VILLARREAL,)	
)	DECISION AND ORDER OF
Member No. 258345,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Isauro A. Villarreal (respondent) was charged with three counts of misconduct involving violations of the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 2, 2008, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 28, 2014, the State Bar properly filed and served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar received from the U.S. Postal Service the receipt card for the May 28th mailing, which was signed by “Carlos Villarreal.”

In addition, reasonable diligence was used to notify respondent of this proceeding. The Senior Trial Counsel (STC), who was assigned to this matter by the State Bar, telephoned respondent’s membership telephone number on June 30, 2014. The voicemail message at that number indicated that the recipient of the message was Isauro Villarreal. The STC left a message advising respondent that she would be filing for default.

On June 30, 2014, the STC also emailed respondent at an email address she had for him. In that email she left her contact information for respondent and also advised him that she would be filing for default. Respondent replied to the STC’s email, indicating that he had not been practicing law for over a year due to mental health issues, some of which he described in his email. The STC replied to respondent’s email to ask for another family member or responsible adult to contact her.

On July 2, 2014, the STC wrote a joint letter to both respondent and Carlos Villarreal, the party who had signed the return receipt for the NDC. In that letter the STC communicated some concerns regarding the State Bar's procedures and respondent's mental health issues, and requested additional information. The STC did not receive a response to her letter by email, letter or phone. Nor did respondent reply to the letter that was sent to him on March 3, 2014, by the State Bar investigator in this matter.³

Respondent failed to file a response to the NDC. On July 8, 2014, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the STC declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.⁴ Respondent did not file a response to the motion and his default was entered on August 5, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and

³ In her declaration, made under penalty of perjury, which was filed with the Notice of Motion for Entry of Default, the STC declared that internal State Bar records indicate that respondent submitted a resignation packet in 2013. The STC further stated that resignation matters generally cannot proceed if there are pending investigations. The instant matter, i.e., case No. 13-O-15437, was pending in November 2013, when the State Bar Court received the resignation packet.

⁴ The STC requested a status conference. A telephonic status conference was held on July 14, 2014. Respondent did not participate telephonically or otherwise for the status conference. At the status conference, the STC advised the court regarding the communication she had received from respondent. Consequently, the court put the matter over until August 4, 2014, for a further status conference. Respondent did not participate in the August 4, 2014 status conference. At that August 4th status conference, the court ordered that the matter proceed by default.

Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.⁵

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 7, 2015, the State Bar filed and properly served the petition for disbarment on respondent at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) it has had no contact with respondent since the default was entered;⁶ (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 18, 2015.

⁵ The receipt card for the court's mailing containing the Order of Entry of Default and Order Enrolling Inactive was returned and received by the State Bar Court on August 11, 2014, bearing the signature "Carlos Villarreal."

⁶ The STC had email and phone contact with respondent's sister on or about August 20 and August 21, 2014. Respondent, however, did not file an Answer to the Notice of Disciplinary Charges, a response to the Motion for Default, or any pleadings in this case, since the default was entered on July 8, 2014. The STC informed respondent's sister that the matter was in default. The STC recommended that respondent's sister seek legal counsel for respondent. In an email on August 20, 2014, the STC stated that she was assigned to prosecute this case. She also stated that there is a six month period in which respondent can move to set aside his default. The STC further advised that if respondent did not move to set aside his default, the State Bar would petition for respondent's disbarment from the practice of law. Respondent's sister received the email from the STC and requested the names of attorneys familiar with State Bar disciplinary matters. The STC sent respondent's sister an email with an alphabetical list of attorneys that she knew practiced defense law in the State Bar Court. She further informed respondent's sister that the State Bar did not and could not endorse any particular attorney. The STC also sent a copy of the Lawyer Assistance Program (LAP) brochure to respondent's sister. Respondent's sister emailed, "thank you." That was the last contact the STC had with respondent's sister. The STC's last contact with respondent was on June 30, 2014, prior to the entry of respondent's default.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Count One – respondent willfully violated section 6103 (failure to obey a court order) by disobeying or violating orders of the court requiring him to do or forbear an act or acts connected with or in the course of his profession, which respondent ought in good faith to do or forbear. Specifically, by not complying with a February 13, 2013 court order requiring him to appear at a status conference and, thereafter, not complying with the March 19, April 9, May 7, and June 4, 2013 further court orders, requiring him to appear at status conferences and pay sanctions, respondent failed to obey court orders.

Count Two - respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report judicial sanctions in the amounts of \$1,000 and \$2,000 to the State Bar.

Count Three – respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar investigator's March 3, 2014 letter, which was received by respondent and which requested that respondent provide a response to the allegations of misconduct being investigated in case No. 13-O-15437.

⁷ In the Notice of Disciplinary Charges, the case number ascribed to Count One, i.e., "3-O-15437" is apparently an error, as the actual case number assigned to the Notice of Disciplinary Charges in the instant matter is "13-O-15437." The error in Count One appears to be typographical and the court finds it to be de minimis.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Isauro A. Villarreal be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Isauro A. Villarreal, State Bar number 258345, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D)).

Dated: May ____, 2015

PAT McELROY
Judge of the State Bar Court